

Supplement Inhalation Product Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jason E. Thompson

Senate Sponsor:

LONG TITLE**General Description:**

This bill regulates supplement inhalation products.

Highlighted Provisions:

This bill:

- defines terms;
- bans the sale of supplement inhalation products that do not have federal approval for sale;
- creates penalties for selling supplement inhalation products that do not have federal approval for sale; and
- creates a criminal penalty.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

26B-7-501, as renumbered and amended by Laws of Utah 2023, Chapter 308

76-10-101, as last amended by Laws of Utah 2024, Chapter 470

ENACTS:

26B-7-523, Utah Code Annotated 1953

76-10-117, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **26B-7-501** is amended to read:

26B-7-501 . Definitions.

As used in this part:

(1) "Community location" means the same as that term is defined:

(a) as it relates to a municipality, in Section 10-8-41.6; and

- (b) as it relates to a county, in Section 17-50-333.
- (2) "Electronic cigarette" means the same as that term is defined in Section 76-10-101.
- (3) "Electronic cigarette product" means the same as that term is defined in Section 76-10-101.
- (4) "Electronic cigarette substance" means the same as that term is defined in Section 76-10-101.
- (5) "Employee" means an employee of a tobacco retailer.
- (6) "Enforcing agency" means the department, or any local health department enforcing the provisions of this part.
- (7) "General tobacco retailer" means a tobacco retailer that is not a retail tobacco specialty business.
- (8) "Local health department" means the same as that term is defined in Section 26A-1-102.
- (9) "Manufacture" includes:
- (a) to cast, construct, or make electronic cigarettes; or
 - (b) to blend, make, process, or prepare an electronic cigarette substance.
- (10) "Manufacturer sealed electronic cigarette substance" means an electronic cigarette substance that is sold in a container that:
- (a) is prefilled by the electronic cigarette substance manufacturer; and
 - (b) the electronic cigarette manufacturer does not intend for a consumer to open.
- (11) "Manufacturer sealed electronic cigarette product" means:
- (a) an electronic cigarette substance or container that the electronic cigarette manufacturer does not intend for a consumer to open or refill; or
 - (b) a prefilled electronic cigarette as that term is defined in Section 76-10-101.
- (12) "Nicotine" means the same as that term is defined in Section 76-10-101.
- (13) "Nicotine product" means the same as that term is defined in Section 76-10-101.
- (14) "Non-tobacco shisha" means any product that:
- (a) does not contain tobacco or nicotine; and
 - (b) is smoked or intended to be smoked in a hookah or water pipe.
- (15) "Owner" means a person holding a 20% ownership interest in the business that is required to obtain a permit under this part.
- (16) "Permit" means a tobacco retail permit issued under Section 26B-7-507.
- (17) "Place of public access" means any enclosed indoor place of business, commerce, banking, financial service, or other service-related activity, whether publicly or privately owned and whether operated for profit or not, to which persons not employed at the

- 65 place of public access have general and regular access or which the public uses,
66 including:
- 67 (a) buildings, offices, shops, elevators, or restrooms;
 - 68 (b) means of transportation or common carrier waiting rooms;
 - 69 (c) restaurants, cafes, or cafeterias;
 - 70 (d) taverns as defined in Section 32B-1-102, or cabarets;
 - 71 (e) shopping malls, retail stores, grocery stores, or arcades;
 - 72 (f) libraries, theaters, concert halls, museums, art galleries, planetariums, historical sites,
73 auditoriums, or arenas;
 - 74 (g) barber shops, hair salons, or laundromats;
 - 75 (h) sports or fitness facilities;
 - 76 (i) common areas of nursing homes, hospitals, resorts, hotels, motels, "bed and
77 breakfast" lodging facilities, and other similar lodging facilities, including the
78 lobbies, hallways, elevators, restaurants, cafeterias, other designated dining areas, and
79 restrooms of any of these;
 - 80 (j)(i) any child care facility or program subject to licensure or certification under this
81 title, including those operated in private homes, when any child cared for under
82 that license is present; and
 - 83 (ii) any child care, other than child care as defined in Section 26B-2-401, that is not
84 subject to licensure or certification under this title, when any child cared for by the
85 provider, other than the child of the provider, is present;
 - 86 (k) public or private elementary or secondary school buildings and educational facilities
87 or the property on which those facilities are located;
 - 88 (l) any building owned, rented, leased, or otherwise operated by a social, fraternal, or
89 religious organization when used solely by the organization members or the
90 members' guests or families;
 - 91 (m) any facility rented or leased for private functions from which the general public is
92 excluded and arrangements for the function are under the control of the function
93 sponsor;
 - 94 (n) any workplace that is not a place of public access or a publicly owned building or
95 office but has one or more employees who are not owner-operators of the business;
 - 96 (o) any area where the proprietor or manager of the area has posted a conspicuous sign
97 stating "no smoking", "thank you for not smoking", or similar statement; and
 - 98 (p) a holder of a bar establishment license, as defined in Section 32B-1-102.

99 (18)(a) "Proof of age" means:

100 (i) a valid identification card issued under Title 53, Chapter 3, Part 8, Identification
101 Card Act;

102 (ii) a valid identification that:

103 (A) is substantially similar to an identification card issued under Title 53, Chapter
104 3, Part 8, Identification Card Act;

105 (B) is issued in accordance with the laws of a state other than Utah in which the
106 identification is issued;

107 (C) includes date of birth; and

108 (D) has a picture affixed;

109 (iii) a valid driver license certificate that is issued under Title 53, Chapter 3, Uniform
110 Driver License Act, or in accordance with the laws of the state in which the valid
111 driver license is issued;

112 (iv) a valid United States military identification card that:

113 (A) includes date of birth; and

114 (B) has a picture affixed; or

115 (v) a valid passport.

116 (b) "Proof of age" does not include a valid driving privilege card issued in accordance
117 with Section 53-3-207.

118 (19) "Publicly owned building or office" means any enclosed indoor place or portion of a
119 place owned, leased, or rented by any state, county, or municipal government, or by any
120 agency supported by appropriation of, or by contracts or grants from, funds derived from
121 the collection of federal, state, county, or municipal taxes.

122 (20) "Retail tobacco specialty business" means the same as that term is defined:

123 (a) as it relates to a municipality, in Section 10-8-41.6; and

124 (b) as it relates to a county, in Section 17-50-333.

125 (21) "Shisha" means any product that:

126 (a) contains tobacco or nicotine; and

127 (b) is smoked or intended to be smoked in a hookah or water pipe.

128 (22) "Smoking" means:

129 (a) the possession of any lighted or heated tobacco product in any form;

130 (b) inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or
131 hookah that contains:

132 (i) tobacco or any plant product intended for inhalation;

- (ii) shisha or non-tobacco shisha;
- (iii) nicotine;
- (iv) a natural or synthetic tobacco substitute; or
- (v) a natural or synthetic flavored tobacco product;
- (c) using an electronic cigarette; or
- (d) using an oral smoking device intended to circumvent the prohibition of smoking in this part.

(23) "Supplement inhalation product" means the same as that terms is defined in Section 76-10-101.

~~[(23)]~~ (24) "Tax commission license" means a license issued by the State Tax Commission under:

- (a) Section 59-14-201 to sell a cigarette at retail;
- (b) Section 59-14-301 to sell a tobacco product at retail; or
- (c) Section 59-14-803 to sell an electronic cigarette product or a nicotine product.

~~[(24)]~~ (25) "Tobacco product" means:

- (a) a tobacco product as defined in Section 76-10-101; or
- (b) tobacco paraphernalia as defined in Section 76-10-101.

~~[(25)]~~ (26) "Tobacco retailer" means a person that is required to obtain a tax commission license.

Section 2. Section **26B-7-523** is enacted to read:

26B-7-523 . Supplement inhalation product -- Penalty.

(1) A supplement inhalation product that has not been approved for sale in interstate commerce by the United States Food and Drug Administration is contraband and may not be sold in the state.

(2)(a) The department or a local health department may issue a fine to a person that sells, offers to sell, or otherwise distributes a supplement inhalation product in violation of Subsection (1) and in accordance with Subsection (2)(b).

(b) A fine described in Subsection (2)(a) shall be assessed as follows:

- (i) for a first violation, \$1,000;
- (ii) for a second violation, \$1,500;
- (iii) for a third violation, \$2,000; and
- (iv) for a fourth violation, \$5,000.

(c) The department or a local health department shall enforce this section under the procedures of Title 63G, Chapter 4, Administrative Procedures Act, as an informal

adjudicative proceeding, including:

(i) notifying a retailer of alleged violations;

(ii) conducting hearings;

(iii) determining violations; and

(iv) imposing civil administrative penalties.

(3)(a) A county or municipality may suspend a person's business license for violations of Subsection (1) and in accordance with Subsection (3)(b).

(b) A suspension of a business license described in Subsection (3)(a) shall be imposed as follows:

(i) for a second violation, a 30-day suspension;

(ii) for a third violation, a 90-day suspension; and

(iii) for a fourth violation, a one year suspension.

(c) A county or municipality shall use the process a county or municipality uses to impose business license suspensions in other contexts to impose a violation under Subsection (3)(b).

(4) At a civil hearing for enforcement under Subsection (2) or (3), evidence of the final criminal conviction of a person for violation of Section 76-10-117 is prima facie evidence of a violation of this section.

Section 3. Section **76-10-101** is amended to read:

76-10-101 . Definitions.

As used in this part:

(1)(a) "Alternative nicotine product" means a product, other than a cigarette, a counterfeit cigarette, an electronic cigarette product, a nontherapeutic nicotine product, or a tobacco product, that:

(i) contains nicotine;

(ii) is intended for human consumption;

(iii) is not purchased with a prescription from a licensed physician; and

(iv) is not approved by the United States Food and Drug Administration as nicotine replacement therapy.

(b) "Alternative nicotine product" includes:

(i) pure nicotine;

(ii) snortable nicotine;

(iii) dissolvable salts, orbs, pellets, sticks, or strips; and

(iv) nicotine-laced food and beverage.

- 201 (c) "Alternative nicotine product" does not include a fruit, a vegetable, or a tea that
202 contains naturally occurring nicotine.
- 203 (2) "Cigar" means a product that contains nicotine, is intended to be burned under ordinary
204 conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in any
205 substance containing tobacco, other than any roll of tobacco that is a cigarette.
- 206 (3) "Cigarette" means a product that contains nicotine, is intended to be heated or burned
207 under ordinary conditions of use, and consists of:
- 208 (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or
209 (b) any roll of tobacco wrapped in any substance containing tobacco which, because of
210 its appearance, the type of tobacco used in the filler, or its packaging and labeling, is
211 likely to be offered to, or purchased by, consumers as a cigarette described in
212 Subsection (3)(a).
- 213 (4)(a) "Electronic cigarette" means:
- 214 (i) any electronic oral device:
- 215 (A) that provides an aerosol or a vapor of nicotine or other substance; and
216 (B) which simulates smoking through the use or inhalation of the device;
- 217 (ii) a component of the device described in Subsection (4)(a)(i); or
218 (iii) an accessory sold in the same package as the device described in Subsection
219 (4)(a)(i).
- 220 (b) "Electronic cigarette" includes an oral device that is:
- 221 (i) composed of a heating element, battery, or electronic circuit; and
222 (ii) marketed, manufactured, distributed, or sold as:
- 223 (A) an e-cigarette;
224 (B) an e-cigar;
225 (C) an e-pipe; or
226 (D) any other product name or descriptor, if the function of the product meets the
227 definition of Subsection (4)(a).
- 228 (c) "Electronic cigarette" does not ~~mean~~ include:
- 229 (i) a medical cannabis device, as that term is defined in Section 26B-4-201[-] ; or
230 (ii) a supplement inhalation product.
- 231 (5)(a) "Electronic cigarette product" means an electronic cigarette, an electronic
232 cigarette substance, or a prefilled electronic cigarette.
- 233 (b) "Electronic cigarette product" does not include a supplement inhalation product.
- 234 (6) "Electronic cigarette substance" means any substance, including liquid containing

235 nicotine, used or intended for use in an electronic cigarette.

236 (7)(a) "Flavored electronic cigarette product" means an electronic cigarette product that
237 has a taste or smell that is distinguishable by an ordinary consumer either before or
238 during use or consumption of the electronic cigarette product.

239 (b) "Flavored electronic cigarette product" includes an electronic cigarette product that is
240 labeled as, or has a taste or smell of any fruit, chocolate, vanilla, honey, candy,
241 cocoa, dessert, alcoholic beverage, herb, spice, or mint.

242 (c) "Flavored electronic cigarette product" does not include an electronic cigarette
243 product that has a taste or smell of only tobacco or menthol.

244 (8) "Nicotine" means a poisonous, nitrogen containing chemical that is made synthetically
245 or derived from tobacco or other plants.

246 (9) "Nicotine product" means an alternative nicotine product or a nontherapeutic nicotine
247 product.

248 (10)(a) "Nontherapeutic nicotine device" means a device that:

249 (i) has a pressurized canister that is used to administer nicotine to the user through
250 inhalation or intranasally;

251 (ii) is not purchased with a prescription from a licensed physician; and

252 (iii) is not approved by the United States Food and Drug Administration as nicotine
253 replacement therapy.

254 (b) "Nontherapeutic nicotine device" includes a nontherapeutic nicotine inhaler or a
255 nontherapeutic nicotine nasal spray.

256 (11) "Nontherapeutic nicotine device substance" means a substance that:

257 (a) contains nicotine;

258 (b) is sold in a cartridge for use in a nontherapeutic nicotine device;

259 (c) is not purchased with a prescription from a licensed physician; and

260 (d) is not approved by the United States Food and Drug Administration as nicotine
261 replacement therapy.

262 (12) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device, a
263 nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device.

264 (13) "Place of business" includes:

265 (a) a shop;

266 (b) a store;

267 (c) a factory;

268 (d) a public garage;

- 269 (e) an office;
- 270 (f) a theater;
- 271 (g) a recreation hall;
- 272 (h) a dance hall;
- 273 (i) a poolroom;
- 274 (j) a cafe;
- 275 (k) a cafeteria;
- 276 (l) a cabaret;
- 277 (m) a restaurant;
- 278 (n) a hotel;
- 279 (o) a lodging house;
- 280 (p) a streetcar;
- 281 (q) a bus;
- 282 (r) an interurban or railway passenger coach;
- 283 (s) a waiting room; and
- 284 (t) any other place of business.

285 (14) "Prefilled electronic cigarette" means an electronic cigarette that is sold prefilled with
286 an electronic cigarette substance.

287 (15) "Prefilled nontherapeutic nicotine device" means a nontherapeutic nicotine device that
288 is sold prefilled with a nontherapeutic nicotine device substance.

289 (16) "Premarket authorized or pending electronic cigarette product" means an electronic
290 cigarette product that:

- 291 (a)(i) has been approved by an order granting a premarket tobacco product
292 application of the electronic cigarette product by the United States Food and Drug
293 Administration under 21 U.S.C. Sec. 387j(c)(1)(A)(i); or
- 294 (ii)(A) was marketed in the United States on or before August 8, 2016;
295 (B) the manufacturer submitted a premarket tobacco product application for the
296 electronic cigarette product to the United States Food and Drug Administration
297 under 21 U.S.C. Sec. 387j on or before September 9, 2020; and
- 298 (C) has an application described in Subsection (16)(a)(ii) that either remains under
299 review by the United States Food and Drug Administration or a final decision
300 on the application has not taken effect; and
- 301 (b) does not exceed:
 - 302 (i) 4.0% nicotine by weight per container; or

- (ii) a nicotine concentration of 40 milligrams per milliliter.
- (17) "Retail tobacco specialty business" means the same as that term is defined in Section 26B-7-501.
- (18) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other lighted smoking equipment.
- (19)(a) "Supplement inhalation product" means a product that:
- (i) uses heat, ultrasonic technology, or other means to convert a liquid, gel, or solid containing a vitamin, mineral, alkaloid other than nicotine, or dietary supplement into an aerosol or vapor; and
 - (ii) is used by placing the product directly on or near an individual's mouth.
- (b) "Supplement inhalation product" includes:
- (i) a component of the product described in Subsection (19)(a); or
 - (ii) an accessory sold in the same package as the product described in Subsection (19)(a).
- (c) "Supplement inhalation product" does not include a product:
- (i) that contains:
 - (A) nicotine; or
 - (B) a cannabinoid; or
 - (ii) that is used for aromatherapy and is not used by placing the product directly on or near an individual's mouth.
- [(19)] (20)(a) "Tobacco paraphernalia" means equipment, product, or material of any kind that is used, intended for use, or designed for use to package, repackage, store, contain, conceal, ingest, inhale, or otherwise introduce a tobacco product, an electronic cigarette substance, or a nontherapeutic nicotine device substance into the human body.
- (b) "Tobacco paraphernalia" includes:
- (i) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
 - (ii) water pipes;
 - (iii) carburetion tubes and devices;
 - (iv) smoking and carburetion masks;
 - (v) roach clips, meaning objects used to hold burning material, such as a cigarette, that has become too small or too short to be held in the hand;
 - (vi) chamber pipes;

- 337 (vii) carburetor pipes;
- 338 (viii) electric pipes;
- 339 (ix) air-driven pipes;
- 340 (x) chillums;
- 341 (xi) bongs; and
- 342 (xii) ice pipes or chillers.

343 (c) "Tobacco paraphernalia" does not include matches or lighters.

344 [(20)] (21) "Tobacco product" means:

- 345 (a) a cigar;
- 346 (b) a cigarette; or
- 347 (c) tobacco in any form, including:
 - 348 (i) chewing tobacco; and
 - 349 (ii) any substitute for tobacco, including flavoring or additives to tobacco.

350 [(21)] (22) "Tobacco retailer" means:

- 351 (a) a general tobacco retailer, as that term is defined in Section 26B-7-501; or
- 352 (b) a retail tobacco specialty business.

353 Section 4. Section **76-10-117** is enacted to read:

354 **76-10-117 . Illegal distribution of a supplement inhalation product.**

355 (1) Terms defined in Sections 76-1-101.5 and 76-10-101 apply to this section.

356 (2) An actor commits illegal distribution of a supplement inhalation product if the actor
357 gives, distributes, sells, offers for sale, or furnishes to any person a supplement
358 inhalation product that has not been approved for sale in interstate commerce by the
359 United States Food and Drug Administration.

360 (3) A violation of Subsection (2) is:

- 361 (a) a class C misdemeanor on the first offense; or
- 362 (b) a class B misdemeanor on a subsequent offense.

363 Section 5. **Effective Date.**

364 This bill takes effect on May 7, 2025.